IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL CONTEMPT PETITION NO. 4 OF 2006

Omprakash Satyanarayan Singh... ... Petitioner.

Versus

Smt.Yasinbee W/o Shami Mohammed & Anr...Respondents.

None present for the Petitioner.

Mrs. U. Kejriwal for Respondent No.2.

CORAM : V.G. PALSHIKAR, and V.R.KINGAONKAR, JJ.

DATED : 28TH APRIL, 2006.

P.C.:

This petition is filed by original Defendant in S.C. Suit No. 7200 of 2000 pending before the City Civil Court, Mumbai.

2. None appeared for the Petitioner when the matter was called out today.

3. We are of the opinion that present contempt petition is not maintainable in as much as the Petitioner has not obtained consent of the Advocate

General. The Petitioner has not explained any substantial reason as to why the regular procedure of seeking such consent of the Advocate General is not resorted to by him. It is well settled that contempt petition, particularly when it relates to contempt of a subordinate court, must be accompanied by consent letter of the Advocate General. The Petitioner moved the learned City Civil Court vide Notice of Motion No. 40 of 2004 for appropriate action against the Plaintiff for alleged contempt. The learned Judge of the City Civil Court rejected the request and did not think it proper to take any action under the Contempt of Courts Act, 1971. The learned Judge of the City Civil Court held that the petition itself was premature since the averments made by the Plaintiffs were yet to be examined and could not be regarded as patently false. Needless to say that the City Civil Court did not make any reference as required under Section 15(2) of the Contempt of Courts Act.

4. The Petitioner filed Writ Petition No. 9649 of 2004 which was allowed to be withdrawn with liberty to take out amendment application in the contempt proceedings. He carried out amendments in the contempt petition.

5. We may take note of the fact that the alleged contempt is in relation to averments made by the Plaintiff in a suit filed in the year 2000 and some other proceedings filed under Sections 145 and 146 of the Criminal Procedure Code. So far, no cognizance of the alleged contempt is taken by this Court. The proceedings are obviously barred by limitation in view of the fact that no notice was issued within a period of one year from the date of such allegation in the pleadings of the Plaintiffs.

6. In **Bal Thackery v/s Harish Pimpalkhute,** 2005(1) Mah.L.J. 322 (S.C.) it is observed:

> "As already noticed the procedure of Section 15 is required to be followed even when petition is filed by a party under Article 215 of the Constitution, though in these matters petitions filed were under Section 15 of the Act. ....
>
> Ofcourse, the Court had the power and jurisdiction to initiate contempt proceedings suo motu and for that purpose consent of Advocate General was not necessary. At the same time, it

> is also to be borne in mind that the Courts normally take suo motu action in rare cases.
> .....
>
> In absence of compliance of mandatory requirement of Section 15, the petitions were not maintainable."

7. We are of the opinion that in the present contempt petition there is no reason to take suo motu cognizance and it is not a rare case to do so. Therefore, in view of above legal position, the petition is not maintainable and is accordingly dismissed.

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